

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH  
BENEFITS FUND, PIRELLI ARMSTRONG  
RETIREE MEDICAL BENEFITS TRUST;  
TEAMSTERS HEALTH & WELFARE FUND  
OF PHILADELPHIA AND VICINITY;  
PHILADELPHIA FEDERATION OF  
TEACHERS HEALTH AND WELFARE  
FUND, and DISTRICT 37 HEALTH AND  
SECURITY FUND,

Plaintiffs,

v.

FIRST DATABANK, INC., a Missouri  
corporation; and McKESSON  
CORPORATION, a Delaware corporation,

Defendants.

C.A. No. 1:05-CV-11148-PBS

**AMENDED**  
**[PROPOSED, UPDATED] ORDER DIRECTING NOTICE TO THE**  
**CLASS AND SCHEDULING A FAIRNESS HEARING**

WHEREAS, this matter has come before the Court pursuant to Class Counsel and FDB's Joint Motion for Preliminary Approval of Proposed Settlement, Certification of Class for Purposes of Settlement Only, and Approval of Form and Manner of Notice filed November 1, 2006 (the "FDB Settlement Motion"); and

WHEREAS, the Court finds that it has jurisdiction over these actions and each of the parties for purposes of settlement and that venue is proper in this district; and

WHEREAS, this Court has issued prior orders dated November 14, 2006, November 22, 2006 and June 6, 2007 relating to FDB Settlement Motion:

**IT IS HEREBY ORDERED THAT:**

**I. Approval of Notice**

The Court finds that direct Notice to the members of the class that are consumers is not feasible given the number, lack of available lists, and the costs of such notice in relation to the nature and estimated range of amounts of the claims of class members who are consumers. Therefore, the Court directs that Notice be provided to the Class in accord with Rule 23(d)(2) and 23(d)(5) and the requirements of due process. Therefore, the Court approves the form and content of the Joint FDB/Medi-Span Settlement Notice Program for mailing and the abbreviated Notice for publication, substantially in the forms attached to the Declaration of Katherine Kinsella dated August 6, 2007, as satisfying the requirements of Rule 23 and due process for the entire putative class.

## II. Approval of Notice Plan

The Court directs that Kinsella Communications be confirmed to act as the Notice Agent (as defined in the Settlement Agreement and Release) and directs the Notice Agent to disseminate the Notice as set forth in the Joint FDB/Medi-Span Settlement Notice Program, which is designed to achieve a reasonable reach and frequency commensurate with the reach and frequency sought in other pharmaceutical pricing litigation and which satisfies the requirements of Rule 23 and due process:

- (a) Publication of the Form of Notice for Publication on dates and in publications substantially as set forth in the Exhibits to the Declaration of Katherine Kinsella dated August 6, 2007, based on Court approval by August 15, 2007;
- (b) Distribution by direct mail of the Form of Notice for Mailing to all TPP Class Members that can be identified by reasonable means or who have requested a copy, which mailing shall be placed in the mail no later than September 10, 2007;
- (c) Distribution by direct mail of the Form of Notice for Mailing to the Attorney General of each State of the United States;

- (d) Development and management of a toll free number with an automated system providing information about the Proposed Settlement, with the ability to request copies of the Notice or the PSA, during the period from September 10, 2007 until the Final Approval; and
- (e) Development and management of a website to provide information and permit the review and downloading of the Notice, PSA and exhibits, during the period from September 10, 2007 until Final Approval.

### III. Fairness Hearing

The Court directs that a hearing be scheduled for January 22, 2008 at 2:00 PM, on final settlement approval (the "Fairness Hearing") before this Court, at the, United States District Court for the District of Massachusetts, One Courthouse Way, Boston, Massachusetts 02210, to consider, *inter alia*, the following: (a) whether the Class should be certified, for settlement purposes only; and (b) the fairness, reasonableness and adequacy of the settlement. Objectors to the Proposed Settlement may be heard at the Fairness Hearing, however, no objector shall be heard and no papers or briefs submitted will be accepted or considered by the Court unless on or before December 21, 2007, any such objector: (1) has filed with the Clerk of the Court in writing a notice of any such objector's intention to appear personally, or, if such objector intends to appear by counsel, such counsel files a notice of appearance; (2) such objector personally or by counsel, to any of the applications before the Court, submits a written statement describing in full the basis for such objector's opposition, and attaches any supporting documentation and a list of any and all witnesses or experts whom such objector shall present to the Court; and (3) has served, on or before December 21, 2007, copies of such notice(s), statement(s), documentation, and list(s) together with copies of any other papers or brief(s) that objector files with the Court or wishes the Court to consider at the Fairness Hearing, upon: (i) Thomas M. Sobol, Hagens Berman Sobol Shapiro LLP, One Main St., 4th


Floor, Cambridge, MA 02142, Class Counsel; (ii) Steve W. Berman, Hagens Berman Sobol Shapiro LLP, 1301 Fifth Avenue, Suite 2900, Seattle, WA 98101, Class Counsel; (iii) Jeffrey L. Kodroff, Spector, Roseman & Kodroff, P.C., 1818 Market Street, Suite 2500, Philadelphia, PA 19103, Class Counsel; and (iv) Sheila L. Birnbaum, Skadden, Arps, Slate, Meagher, & Flom LLP, 4 Times Square, New York, NY 10036, Counsel for First DataBank, Inc.

**IV. Request For Exclusion From the Class**

The Court further directs that any putative Class member wishing to exclude himself, herself or itself from the proposed Class, must sign a written request to be excluded containing the information set forth in the Notice, and any such exclusion request must be mailed to the Notice Agent at the following address FDB/Medi-Span Litigation Administrator c/o Complete Claims Solutions LLC, West Palm Beach, Florida 33416 and postmarked (no metered postmarks) on or before December 21, 2007.

**SO ORDERED.**

DATED: Boston, Massachusetts  
This \_\_\_\_ day of \_\_\_\_\_, 2007

  
Patti B. Saris, Judge  
United States District Court